

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE,:	:	
FOR RESIDENTIAL ASSET SECURITIES	:	
CORPORATION, HOME EQUITY MORTGAGE	:	
ASSET-BACKED PASS-THROUGH CERTIFICATES,	:	
SERIES 2005-EMX1	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 20-00227-MSM-LDA
	:	
ARIEL TORRES	:	
	:	
Defendant.	:	

**STATEMENT OF UNDISPUTED MATERIAL FACTS**

1. Ariel Torres became the owner of the real estate located at 40 Carter Street, Providence, Rhode Island (the “Property”), pursuant to a Warranty Deed from Paulino A. DeJesus and Maria T. DeJesus to him, dated November 27, 2004 and recorded on December 20, 2004, in the Land Evidence Records for the City of Providence (“Land Records”) in Book 6994 at Page 350. Complaint at ¶ 6; Answer at ¶ 6.
2. On December 17, 2004, Mr. Torres executed a mortgage (the “Mortgage”) to secure the repayment of a \$199,920.00 loan against the Property in favor of Mortgage Electronic Registration Systems, Inc. (“MERS”) as mortgagee as nominee for Mortgage Lenders Network USA, Inc. DBA Lenders Network (“Lender”) and Lender’s successors and assigns, which was recorded with the Land Records on December 20, 2004 in Book 6995 at Page 0001. A true and accurate copy of said Mortgage is attached hereto as **Exhibit A**. Complaint at ¶ 7; Answer at ¶ 7.
3. On May 18, 2011, MERS assigned the Mortgage to U.S. Bank, National Association, as Trustee for Residential Asset Securities Corp 2005-EMX1 by an assignment

(“Assignment”) recorded with the Land Records on August 2, 2011, in Book 10050 at Page 96. A true and accurate copy of the Assignment is attached hereto as **Exhibit B**. Complaint at ¶ 8; Answer at ¶ 8.

4. U.S. Bank National Association is a federally-chartered national banking association. Answer at ¶ 2.
5. There is a trust known as RASC Series 2005-EMX1 Trust. Answer at ¶ 1.
6. U.S. Bank National Association is the trustee for the beneficiaries of the trust known as RASC Series 2005-EMX1 Trust. Affidavit of Jeremiah Herberg, attached as **Exhibit C** at ¶ 6.
7. The depositor for RASC Series 2005-EMX1 Trust is Residential Asset Securities Corporation. Doc. 8-1 at p. 2.
8. The securities issued through the RASC Series 2005-EMX1 Trust are titled “Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2005-EMX1. Doc 8-2 at p. 2.
9. Distributions made through the RASC Series 2005-EMX1 Trust are made to the holders of the Residential Asset Securities Corporation, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2005-EMX1. Doc 8-3 at p. 3, Section 8.
10. Mr. Torres defaulted on the Mortgage by failing to make the payment due on or about November 1, 2010, and all subsequent payments. Complaint at ¶ 9; Answer at ¶ 9.
11. Because Mr. Torres defaulted on the Mortgage before May 16, 2013, the holder of the Mortgage was exempt from the requirements of R.I. Gen. Laws § 34-27-3.2. Complaint at ¶ 10; Answer at ¶ 10.

12. On May 8, 2018, Wells Fargo Home Mortgage, agent for the holder of the mortgage, sent a notice of default (“Notice of Default”) by first class mail to Torres at the Property. A true and accurate copy of the Notice of Default is attached as **Exhibit C-1**. **Exhibit C** at ¶ 8.
13. Torres did not cure the default on or before June 12, 2018. **Exhibit C** at ¶ 10.
14. On December 3, 2018, Bendett & McHugh, as attorney for U.S. Bank National Association, as Trustee, for Residential Asset Securities Corporation, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2005-EMX1, sent a notice of credit counseling (“Notice of Counseling”) to Torres by certified mail pursuant to *R.I. Gen. Laws* § 34-27-3.1. A true and accurate copy of the Notice of Counseling is attached as **Exhibit D-1**. See Affidavit of Ashley Torres, formerly known as Ashley Brinkmann, attached as **Exhibit D** at ¶¶ 4-5.
15. According to the certified mail receipt for tracking number 71901364740000505794, which Torres attached as Exhibit 8 to his Answer, the U.S. Postal Service left a notice at the Property concerning the Notice of Counseling on December 10, 2018, but, because it was unclaimed, the Notice of Counseling was being returned to sender beginning January 18, 2019. See Answer at Exhibit 8; **Exhibit D** at ¶¶ 7-8; **Exhibit D-2**.
16. On April 9, 2019, Bendett & McHugh, as foreclosure counsel for the U.S. Bank National Association, as Trustee, for Residential Asset Securities Corp, 2005-EMX1, mailed a notice (“Notice of Intent to Foreclose”) by first class and certified mail, return receipt requested, stating its intention to foreclose by sale under the power of sale contained in the Mortgage on June 5, 2019. A true and accurate copy of the Notice of Intent to

Foreclose is attached as Exhibit A to the Foreclosure Deed (**Exhibit E**). See Affidavit of Rita Tabraham, included with the Foreclosure Deed (**Exhibit E**), at p. 9 ¶ 4.

17. Notices of the foreclosure sale were published on May 13, May 20, and May 27, 2019, in the Providence Journal, in compliance with R.I. Gen. Laws §§ 34-11-22 and 34-27-4. Complaint at ¶ 14; Answer at ¶ 14.
18. On June 5, 2019, at 9:06 am, Mr. Torres executed a document titled “Notice of Defects Stated by Ariel Torres Regarding the Deficiencies in the Foreclosure Process for 40 Carter Street, Providence, Rhode Island 02907 and Notice that Suit will be Filed” (hereinafter referred to “Notice of Defects”) and recorded it on June 5, 2019, at 9:06 a.m., with the Land Records in Book 12376 at Page 168. A true and accurate copy of said Notice of Defects is attached hereto as **Exhibit F**. Complaint at ¶ 15; Answer at ¶ 15.
19. The Notice of Defects asserts that the foreclosure sale was invalid or defective for reasons stated therein. Complaint at ¶ 16; Answer at ¶ 16.
20. On June 5, 2019, at about 12:00 p.m., U.S. Bank, National Association, as Trustee for Residential Asset Securities Corp 2005-EMX1 foreclosed the Mortgage by exercising the statutory power of sale and conveyed (or purported to convey) the Property to U.S. Bank as Trustee by a Foreclosure Deed Under Power of Sale in Mortgage (“Foreclosure Deed”) dated July 1, 2019, which was recorded with the Land Records on January 8, 2020, in Book 12603 at Page 239. A certified copy of said Foreclosure Deed is attached hereto as **Exhibit E**.
21. U.S. Bank as Trustee previously conducted a foreclosure sale of the Property on January 6, 2012, and recorded a foreclosure deed on May 30, 2012. Answer at Exhibit 7.

22. On January 2, 2018, Marinosci Law Group, P.C. (“Marinosci”) filed an Affidavit of Ineffective Foreclosure indicating that Marinosci, on behalf of US Bank National Association as Trustee for RASC 2005-EMX1, mailed a “Notice of Intent to Foreclosure Mortgage” on May 9, 2011, sent notices of a foreclosure sale on November 16, 2011, held a foreclosure sale on January 6, 2012, and recorded a foreclosure deed on May 30, 2012, but that the foreclosure sale was void and the deed of no force and effect. Answer at Exhibit 7.

U.S. BANK NATIONAL ASSOCIATION, AS  
TRUSTEE, FOR RESIDENTIAL ASSET  
SECURITIES CORPORATION, HOME EQUITY  
MORTGAGE ASSET-BACKED PASS-  
THROUGH CERTIFICATES, SERIES 2005-  
EMX1

By its Attorneys,

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Dated: December 11, 2020

### **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the 11th day of December, 2020, this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be mailed to those indicated as non-registered participants.

/s/ Jeffrey C. Ankrom